

ESTTA Tracking number: **ESTTA20664**

Filing date: **12/06/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### **Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

#### **Opposer Information**

<b>Name</b>	Ropintasco Holdings, L.P.
<b>Granted to Date of previous extension</b>	12/08/2004
<b>Address</b>	2160 Satellite Blvd., Suite 200 Duluth, GA 30097 UNITED STATES

<b>Attorney information</b>	Terrence J. McAllister, Esq. Ohlandt, Greeley, Ruggiero & Perle, LLP One Landmark Square, 10th Floor Stamford, CT 06901-2682 UNITED STATES trademark@ogrp.com Phone:203 327 4500
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#### **Applicant Information**

<b>Application No</b>	78148562	<b>Publication date</b>	08/10/2004
<b>Opposition Filing Date</b>	12/06/2004	<b>Opposition Period Ends</b>	12/08/2004
<b>Applicant</b>	Sensys Medical 7470 West Chandler Blvd. Chandler, AZ 85226		

	UNITED STATES
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### **Goods/Services Affected by Opposition**

<p>Class 009.</p> <p>All goods and services in the class are opposed, namely: Optical measurement equipment, namely electronic equipment for noninvasive determination of analyte concentration; software for the determination of analyte concentration optically and non-invasively in detected near-infrared radiation for use in connection with medical equipment and apparatus</p>
<p>Class 010.</p> <p>All goods and services in the class are opposed, namely: Medical diagnostic and monitoring apparatus; namely, apparatus for the non-invasive determination of analyte concentration by use of near-infrared radiation</p>

<b>Attachments</b>	Sensys.GTS.Opposition.pdf ( 5 pages )
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<b>Signature</b>	/OGRP-CNR-TJM-BY/
<b>Name</b>	Terrence J. McAllister, Esq.
<b>Date</b>	12/06/2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/148,562, SENSYS GTS  
Published in the *Official Gazette* on August 10, 2004

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Ropintassco Holdings, L.P.,

Opposition No.:

Opposer,

vs.

Sensys Medical,

Applicant.

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NOTICE OF OPPOSITION

Ropintassco Holdings, L.P. ("Opposer") a Limited Partnership formed under the laws of Delaware, having an office at 2160 Satellite Blvd., Suite 200, Duluth, Georgia 30097, believes it will be damaged by the issuance of a registration to Sensys Medical, a Delaware corporation with a principal place of business at 7470 West Chandler Blvd., Chandler, Arizona 85226, for Application Serial No. 78/148,562 for the claimed mark SENSYS GTS. Accordingly, Opposer hereby opposes said mark under provisions of Section 13 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. §1063.

As grounds for opposition, it is alleged that:

1. Opposer, by itself and through its predecessors in interest and title, and related companies (collectively referred to as "Opposer"), is the owner of the mark SENSYS.
2. Opposer has been using the SENSYS Mark for nearly ten (10) years, i.e., since at least as early as 1995, in connection with digital camera systems, and has continuously used the SENSYS mark since that time.
3. Opposer currently offers digital camera systems under the SENSYS Mark.

4. Opposer has developed substantial goodwill in its SENSYS Mark and the SENSYS Mark is well-known and respected by the consuming public and members of the trade.
5. As a result of the long use and promotion of the SENSYS Mark by Opposer, the SENSYS Mark has become distinctive and distinguishes Opposer's products from the products of other companies, and distinguishes the source or origin of Opposer's products. As a result of Opposer's efforts, consumers and members of the trade throughout the United States recognize and associate the SENSYS Mark with Opposer and Opposer's products.
6. Opposer has registered the SENSYS Mark on the Principal Register with the United States Patent and Trademark Office. Opposer is the owner of U.S. Registration No. 2,205,455 for the SENSYS Mark covering "digital camera systems, namely, video-resolution cooled charge-coupled device (CCD) cameras" in International Class 9. This registration is incontestable pursuant to 15 U.S.C. §1065.
7. Applicant Sensys Medical ("Applicant") applied on July 29, 2002 to register the mark SENSYS GTS ("Applicant's Mark") for "optical measurement equipment, namely electronic equipment for noninvasive determination of analyte concentration; software for the determination of analyte concentration optically and non-invasively in detected near-infrared radiation for use in connection with medical equipment and apparatus" in International Class 9 and "medical diagnostic and monitoring apparatus; namely, apparatus for the non-invasive determination of analyte concentration by use of near-infrared radiation" in International Class 10.
8. Applicant's Mark is based on an intent-to-use and priority of use is therefore not

at issue in this proceeding. To the extent that Applicant might claim use of Applicant's Mark, such use began long after the SENSYS Mark became distinctive of Opposer and Opposer's products.

9. Applicant's Mark incorporates the entirety of Opposer's SENSYS Mark.

10. "SENSYS" is the dominant element of Applicant's Mark.

11. "GTS" is an abbreviation of the term "Glucose Tracking System," and is not a distinctive element of Applicant's Mark.

12. Opposer's SENSYS products and Applicant's optical measuring equipment are sold through the same channels of trade.

13. Opposer's SENSYS products and Applicant's medical diagnostic and monitoring apparatus are sold through the same channels of trade.

14. Opposer's digital camera systems can be incorporated into optical measuring equipment.

15. Applicant's Mark so resembles Opposer's SENSYS Mark in terms of sight, sound, overall appearance, and commercial impression, as to be likely, when used on or in connection with Applicant's products and/or services, to cause confusion, or to cause mistake, or to deceive consumers and members of the trade into believing that Applicant's products and/or services originate from, are sponsored by, or otherwise authorized by Opposer, when, in fact, they are not.

16. Applicant's products are so similar to those products offered by Opposer in connection with its SENSYS Mark that consumers and members of the trade are likely to believe that they emanate from the same source.

17. Registration of Applicant's Mark would be a source of damage to Opposer

because consumers and members of the trade are likely to attribute the source or sponsorship of Applicant's products to Opposer.

18. Registration of Applicant's Mark would be a source of damage to Opposer because registration would confer upon Applicant statutory presumptions to which Applicant is not entitled in view of Opposer's long prior use of its SENSYS Mark.

18. Registration of Applicant's Mark will dilute, or is likely to dilute, the distinctive quality of Opposer's SENSYS Mark, all within the meaning of 15 U.S.C. §1125(c).

WHEREFORE, Opposer prays that registration of Application No. 78/148,562 be denied and that this opposition be sustained in favor of Opposer on the merits, with prejudice, and without leave to refile.

Please direct all correspondence to the undersigned at the address listed below.

Respectfully submitted,

OHLANDT, GREELEY, RUGGIERO & PERLE, L.L.P.



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Date: December 6, 2004

ATTORNEYS FOR OPPOSER,  
ROPINTASSCO HOLDINGS, L.P.

CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the foregoing "Notice of Opposition" was filed electronically through the Electronic System for Trademark Trial and Appeals ("ESTTA") located on the U.S. Patent and Trademark Office's website at <uspto.gov> on this 6<sup>th</sup> day of December, 2004.

A handwritten signature in black ink, appearing to read 'T. McAllister', written over a horizontal line.

Terrence J. McAllister  
ATTORNEY FOR OPPOSER,  
ROPINTASSCO HOLDINGS, L.P.